IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.572 OF 2004

Ranjitsing Brahmajeetsing Sharma,
Retired (Commissioner of Police, Mumbai
& Addl. Director General of Police,
Maharashtra), residing at 20, Suniti,
Opposite Mantralaya, Mumbai-400 032
(At presently detained as Under Trial
Prisoner in Yerawada Central Prison,
Pune. .. Applicant

Vs

1. The State of Maharashtra,
through the Secretary,
Home Department,
Government of Maharashtra, Mantralaya,
Mumbai-400 032.
2. The Union of India,
(through the Central Bureau of
Investigation) having its Head
Office at Delhi and Regional Office
at Tanna House, Colaba, Mumbai .. Respondents.

Mr.V.R.Manohar, Senior Advocate, with Mrs Usha

Dahanukar, Mr Shrikant Shivade, Ms Akhila Kaushik, Shyam Dewani i/b Khaitan & Jaykar for the applicant.

Mr. Lalit Chari, Senior Advocate with Mr R.B.Thakare

and Mr A.M.Chimalkar, for the respondents.

Mr V.B.Konde-Deshmukh, APP for respondent -State.

CORAM : D.B.BHOSALE,J.

DATE : 16th JULY, 2004

JUDGMENT:

1. Heard Mr.Manohar, learned Senior Counsel, for the applicant and Mr.Chari, learned Senior Counsel, for respondent no.2-CBI and Mr V.B.Konde-Deshmukh, learned Addl.Public Prosecutor for respondent no.1-State.

2. This application raises several questions of law and some of them pose very serious questions of far reaching consequences. It is filed by the applicant under sections 439 and 482 of the Code of Criminal Procedure for being released on bail in C.R.No.135 of 2002 registered at Bund Garden Police Station under the various provisions of Indian Penal Code and sections

3(2)(5) with particular reference to section 2(1)(a) and (b) and section 24 of Maharashtra Control of Organised Crime Act, 1999 (for short, "MCOCA"). His application seeking bail under section 21(4)(b) of MCOCA was rejected by the learned Special Judge (Under MCOCA), Pune, by order dated 19.1.2004.

3. The crime was initially registered by Bund Garden Police Station for offences under sections 120-B, 255, 249, 260, 263A(b), 478, 472 and 474 read with section 34 of IPC against the three accused who came to be arrested on 7.6.2002. As the investigation progressed, the investigating agencies kept on adding several persons as accused, consisting of Politicians, Government Officials, I.P.S. Officers, Police Officers etc, and, as of today, about 65 accused have been shown arrested in C.R.No.135/02. The applicant, former Commissioner of Police, Mumbai, is arrayed as Accused no.60 in the said crime. The provisions of MCOCA were invoked by the investigating agency on 3.9.2002. The applicant came to be arrested on 1.12.2003. He was in police custody until 6.12.2003.

4. The investigation was being conducted by Bund Garden Police Station which was taken over subsequently by the Special Investigating Team, (SIT) constituted vide Government of Maharashtra Resolution No.CII/2002/ 389/POL-12 dated 2.12.2002. Thereafter, the investigation was taken over by the Central Bureau of Investigation, (CBI) in pursuance of the order of the Apex Court dated 15.3.2004. The investigation in this case still continues.

5. Factual matrix that would be relevant and material for deciding the present application, in brief, is as follows:-

The applicant was the Commissioner of Police, Pune from 30.4.2000 to 31.12.2000 and the Commissioner of Police, Mumbai from 1.1.2003 to 30.11.03. Before he was appointed as the Commissioner of Police, Pune, he occupied the posts of Inspector General/ Additional Director General, Konkan Range, Commissioner (Intelligence) for State of Maharashtra, Commissioner of Police, Nagpur, Pune, Mumbai etc. He claims that he has rendered unblemished and meritorious service all throughout

and is a recipient of various prestigious awards.

On 7.6.2002, while the applicant was Commissioner of Police, Pune, he received information that on that very day three persons in silver coloured Indica car bearing no.10-H-04-A1-200 were coming from Mumbai towards S.T.Stand near Pune Railway Station with fake stamp papers for delivery. He conveyed this telephonically to Bund Garden Police Station. On 7.6.2002 in pursuance of the said information, the Indica Car was intercepted by the Officials of Bund Garden police station and three accused alongwith fake stamps worth about 200 Crores came to be arrested. First Information Report was lodged by PI Kale and was recorded by PI Deshmukh of Bund Garden police station and an offence vide Crime No.135/2002 came to be registered. Extensive investigation was launched. Number of places were raided and huge quantity of stamps, printing machinery worth Rs.21,28,47,63,824/- were seized from various accused persons. The inmates of the said car were (i) Mukadam Hussain Mohd. Sub Tadkod (driver), (ii) Shankar Rajaram Ganappa, (iii) Mohd. Moulali Gaus Siggve.

Initially, the investigation was being conducted by PI Mr.Deshmukh under day-to-day direct supervision of Additional C.P. (Crime) Mr.S.M.Mushrif. Mr.Mahesh Gauri was the immediate superior of Mr.Mushrif being the Joint Commissioner of Police. Mr.Mushrif was incharge of the Crime Branch, Pune. Several teams consisting of various officers were appointed for carrying out the investigation of this crime. A team was also formed for field work, which was consisting of Mr. Mulani, Assistant Commissioner of Police (Crime Branch), Pune (for short, "Mulani") and other officers. The applicant, being the Commissioner of Police, was overall in-charge of the area of commissionerate.

Looking to the volume and magnitude of the "fake stamp case" and wide spread activities a proposal to invoke the provisions of MCOCA was forwarded by PI Deshmukh on 9.7.2002. On 26.8.2002 PI Deshmukh requested the Joint Commissioner of Police for invoking the provisions of MCOCA, as statutory period of 90 days was to expire on 3.9.2002. On 3.9.2002, the Joint Commissioner of Police Mr.Maheshgauri, granted prior approval under

section 23(1) of MCOCA against accused No.23- Abdul Karim Ladsa Telgi (for short, "Telgi") and Accused No.25 Mr.Shabir Sheikh. However as the statutory period of 90 days was coming to an end the first Chargesheet was filed against 23 accused on 3.9.2002. In pursuance of the proposal submitted by DCP Wakade, Mr Jaiswal, DIG, SRPF, Mumbai granted an approval to invoke the provisions of MCOCA against all the accused on 22.11.2002. After invoking the provisions of MCOCA, DCP Dr.Jai Jadhav took over the investigation of crime no.135/02.

6. In so far as the allegations against the applicant and his role is concerned, a reference would be made to it at a later stage.

7. The applicant came to be arrested in C.R.No.135/02 on 1.12.2003. The applicant filed an application before the learned Special Judge under section 21(4)(b) of MCOCA claiming himself to be absolutely innocent, stating that even if all the allegations are taken as true, the provisions of MCOCA are not applicable, and, therefore, he cannot be continued in incarceration any further.

8. I heard Shri V.R.Manohar, learned senior counsel for the applicant, Shri Lalit Chari, learned senior counsel and Mr R.B.Thakare, learned counsel for the respondent-CBI and Mr V.B.Konde-Deshmukh, learned APP for the respondent-State, at length. With the assistance of the learned senior counsel appearing for the parties, I have perused the entire material placed before me. The learned senior counsel appearing for both the sides advanced lengthy submissions on the questions of law and facts and cited various judgments of the Apex Court and High Courts. As I have stated at the outset, that as the questions involved and raised in the instant application have far reaching consequences, I would like to deal with the contentions urged by the learned senior counsel at an appropriate stage in detail.

9. The submissions of Mr Manohar, learned senior counsel for the applicant are as follows.

The underlying principles in section 437 of Cr.P.C. point more towards grant of bail, except in cases where there are reasonable grounds for believing that the accused has been guilty of

an offence punishable with death or life imprisonment. He placed reliance on the judgments of the Apex Court in **Gurucharan Singh Vs. State, AIR 1978 SC 179** and **Gudikanti Narasimhulu Vs.Public Prosecutor, AIR 1978 SC 429.**

Mr.Manohar further submitted that the Court while considering an application for bail with reference to section 21(4)(b) is not called upon to record a finding of being guilty, and has only to see, if there are reasonable grounds for believing that the accused is not guilty and record its findings about the existence of such grounds.

Since the provisions of MCOCA and the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 or Terrorist and Disruptive Activities (Prevention) Act, 1987 are similar, Mr Manohar placed reliance upon the judgments under the provisions of those Acts and submitted that the provisions of section 21(4)(b) is not to be equated with section 248 of Cr.P.C which demands acquittal on finding of not guilty. The Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and record its satisfaction about the existence of such

grounds. In support, a reliance was placed on the judgments of this Court in **Lorance D'souza Vs. State of Maharashtra & Anr, 1992 Cri.L.J.399 (Bombay), Gopal Rajlingam Avalara Vs. State of Maharashtra, III (1995) CCR 482**.

Mr.Manohar invited my attention to the judgment of the Apex Court in **Nivranjansingh Vs. state of Maharashtra, AIR 1990 SC 962 and Hitendra Thakur Vs. State of Maharashtra, 1994 (4) SCC 602** and contended that the provisions of stringent penal acts need not be resorted to if the nature of activities of the accused can be checked and controlled under the ordinary law of the land. The Courts should always consider carefully the material available on record and apply their mind to see whether the provisions of such Act are even prima facie attracted.

Mr.Manohar further submitted that the allegations levelled against the applicant, as borne out from the chargesheet filed before the Special Court, are baseless. He took me through several documents and contended that the applicant was innocent in respect of Mulani or Cuffe Parade flat episode and he cannot be said to have aided or

abetted either Mulani or Kamat in committing the organised crime or helped or supported the organised crime syndicate of Telgi. The commission of acts and omissions of the applicant could at the most be termed as dereliction of duty.

Mr. Manohar submitted that if the provisions of MCOCA are, prima facie, not attracted, qua the present applicant, the applicant is entitled to bail in routine course. He further submitted that no offence under section 3(2)(5) or section 24 of MCOCA is made out against the applicant.

In order to avoid repetition, the other submissions of Mr Manohar, would be referred to and dealt with at appropriate place.

10. On the other hand, Mr.Chari, learned senior counsel appearing for CBI, submitted that this is not a case involving few persons or individuals which can be shown to have been accomplished by a particular time. This case begins with Telgi entering into the business of dealing in counterfeit stamps and stamp papers and even before he is shown to have acquired machinery

for its fabrication. His activities started since 1992-93 and were on a large scale spreading all over India. Some politicians, security personnel and police officers are involved in this case. Telgi was placed under arrest in November, 2001. However, according to Mr Chari, there is an evidence that the sales of these counterfeit stamps and stamp papers continued in 2002-2003, offices were opened at New Bombay, Pune, Nashik, Ahamadabad, Bhopal, Lucknow, Trichy etc. Recoveries were made right upto the year 2002 and they continued to be made even in 2003. He, therefore, submitted that what emerges is a picture of an organised apparatus set up for business of dealing in counterfeit stamps and stamp papers on a large scale which could match even a well organised legitimate business activity in this country and with, perhaps, more efficiency.

Mr Chari made specific reference to the definition of "abet" in section 2(1)(a) to contend that the communication or association with any person with actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate, amounts

to abetment. This was with the specific reference to the communication and association of the applicant with Mulani.

He further submitted that the acts and omissions of the applicant squarely constitute an offence under sections 3 and 24 of MCOCA. Mr.Thakare, learned counsel assisting Mr Chari, learned senior counsel, took me through the voluminous record to demonstrate the association of the applicant with the tainted police officers, in particular Mulani and Kamat, and submitted that the acts and omissions of the applicant, undoubtedly, establish prima facie case against the applicant and it cannot be said that there are no reasonable grounds for believing that the applicant is not guilty of such offence. Other submissions of Mr Chari would be referred to and dealt with at an appropriate place.

11. Section 21(4)(b) of MCOCA deals with the powers of the Court in respect of grant of bail to a person accused with the crime under the provisions of MCOCA. Therefore, while applying the underlying principles in section 437 of Cr.P.C for

granting bail to the accused, who is charged with the provisions of MCOCA, the mandate of section 21(4)(b) will have to be borne in mind. The Court granting bail under section 21(4)(b) is expected to exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation on merits of the case need not be undertaken, there is a need to indicate in such order reasons for prima facie concluding why bail was being granted or refused.

The Apex Court has, time and again, held that any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider, among other circumstances, the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence coupled with reasonable apprehension of tampering of witnesses. The Apex Court in **Ramgovind Upadhaya Vs. Sudash Singh, 2002 (3) SCC 598** has clearly held that grant of bail, though is a discretionary order calls for exercise of such a discretion in a judicious manner and not as a matter of course. Though placement of

the accused in the society, may be of some relevance but that, by itself, cannot be a guiding factor in the matter of grant of bail and the same ought always to be coupled with other circumstances warranting the grant of bail. The provisions of sections 437 and 439 of Cr.P.C govern the grant of bail with the rider of Section 21(4)(b) of MCOCA. The Apex Court in **Gurucharan Singh** (supra) has noted that while exercising judicial discretion in granting bail, the Court should always bear in mind that the liberty of an individual is not unnecessarily and unduly abridged. However, while so doing, the Courts are also expected to see that cause of justice does not suffer.

Section 21(4)(b) of MCOCA provides that notwithstanding anything contained in the Code, no person accused of an offence punishable under MCOCA shall, if in custody, be released on bail or on his own bond, unless (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and (b) where the Public Prosecutor opposes the application, the Court is satisfied that "there are reasonable grounds for believing that he is not guilty of such offence and that he

is not likely to commit any offence while on bail". It is true, the Court, while considering an application for bail with reference to section 21(4)(b) of MCOCA, is not expected to record a finding of not guilty. However, the mandate of section 21(4)(b) is absolutely clear. In short, while considering the question of releasing the accused on bail under section 21(4)(b) the Court is called upon to see if there exist "reasonable grounds" for believing that the accused is not guilty and record its satisfaction to that effect in the order.

This Court in the case of **Lorance D'Souze** (supra) while considering the provisions of section 37 of NDPS Act has noted that "the Court is called upon to see that if there are grounds for believing that the accused is not guilty and record its satisfaction about the existence of such grounds, i.e. not to say that the Court has to consider the matter as if it is pronouncing a judgment of acquittal recording a finding of not guilty." I am in total agreement with the view expressed by the learned Single Judge in the aforestated case. In the present case, therefore,

I am required to examine whether there exist reasonable grounds to believe that the applicant is not guilty of such offence and that he is not likely to commit any offence while on bail.

12. A proposition of law that stringent penal Acts have to be construed strictly and the provisions of MCOCA are a departure from the normal penal laws of the country and unless the acts committed by the accused squarely fall within the provisions of the stringent statutes, he should not be roped in by stretching the language of such enactment, needs no further support. The Apex Court in **Niranjansingh** and in **Hitendra Thakur** has laid down the aforestated proposition of law. However, that does not mean that merely because the activities of the accused can be checked and controlled under the ordinary law of the land, the provisions of MCOCA if they are otherwise attracted, he cannot be charged under the provisions of the said Act. The very objects of the statute would be frustrated if the provisions of MCOCA are not invoked in the case where they are attracted. Undoubtedly, MCOCA tends to be very

harsh and drastic containing stringent provisions and provides minimum punishment and in some other offences enhanced penalties also. Keeping these principles of law in view, the Courts should always consider carefully the material available on record and apply their mind to see whether the provisions of MCOCA are even, prima facie, attracted, and while so doing one has to be very careful while examining the evidence or material placed in support of the application of MCOCA.

13. Before proceeding further, it would be advantageous at this stage to make reference to the allegations against the applicant and his role, as reflected in the chargesheet and the written submissions filed on behalf of the CBI, in order to appreciate the submissions of the learned senior counsel for the parties. In so far as role of the applicant is concerned, according to the respondents, commission of his various acts and omissions have resulted in rendering help and support to Organised Crime Syndicate. The help or support was rendered through Mulani (co-accused) when the applicant was the Commissioner of Police,

Pune and through API -Dilip Kamat (co-accused) while he was the Commissioner of Police, Mumbai.

I. The applicant knew the adverse antecedents of Mulani since 1996. The respondents have relied on the following circumstances and the sequence of events in support of their case against the applicant.

(a) A complaint about corruption was received in respect of Mulani on 14.9.1996, who was then the Sr.Inspector of Police at Dongri Police Station, Mumbai. A copy of this complaint was also received by the applicant, who was then working as Jt.Commissioner of Police, Mumbai and bears his signature on it. The said complaint was forwarded by the applicant to Anti Corruption Bureau, Mumbai.

(b) In the affidavit dated 29.10.2002 filed by the applicant in his capacity as Commissioner of Police, Pune before the Maharashtra State Administrative Tribunal (MAT) against Mulani he has categorically affirmed that conduct of Mulani was found to be highly suspicious in sensational murder case of one Faizulla Khan.

(c) On 6.9.2002, the Investigation was handed over to DCP Jay Jadhav as by then the

provisions of MCOCA were invoked against two of the Accused in C.R. No.135/2002. New teams were formed for the investigation under MCOCA. While forming the team, the applicant included Mulani's name in the investigation team in connection with the investigation of C.R. No.135/2002 (Page No.12694 of chargesheet) though he was specifically told by DCP Jay Jadhav not to include him in the team (statement of CDP Jay Jadhav Page 11941 of the Chargesheet). It was on the pretext that PI Deshmukh was too overburdened being in charge of Bund Garden police station and it was only Mulani who knew all the facts of the case.

(d) The investigation revealed that Ashok Basak, Addl.Chief Secretary (Home), State of Maharashtra (for short, "Basak") had informed the applicant on 6.9.2002 about Mulani being in telephonic contact with Telgi, who was then lodged in Central Jail at Bangalore and his tainted role in fake stamp case. This information was passed on to Basak by Adhip Choudhari, Addl.Chief Secretary (Home), Government of Karnataka. The applicant had assured Ashok Basak that he would remove Mulani from investigation. Despite this, Mulani was not

neutralised by the applicant and he was allowed to continue in the investigation team.

(e) There is no dispute that atleast on 6.9.2002 Basak had shared the said information with the applicant.

(f) A complaint of corruption dated 15.7.2002 received from President, Pune Forum Citizen, against ACP Mulani, was received by the applicant on 31.8.2002.

(g) Mulani was transferred to Jat, Dist-Sangli by the order of the Government dated 4.9.2002. This order was received in Pune on 6.9.2002. The order of transfer of Mulani was not served till he had obtained a stay against the transfer from the MAT on 6.9.2002 (Page 12843).

(h) The Stay was for transfer to JAT Division and not for internal transfer. Yet, Mulani was not transferred from the investigation of C.R.No.135/2002, on the other hand, Mulani was sent to Bangalore on 18.9.2002 all alone without the I.O.

(i) The Government of Maharashtra had constituted Special Task Force (STF) for enquiring into all the pending cases relating to counterfeit

stamps in the State of Maharashtra and the applicant was appointed as the Chairman to head the STF. Not a single meeting of this STF was convened by the applicant.

(j) Mulani was allowed to be associated with the investigation **till 30.9.2002** and he was transferred to Special Branch only on 30.9.2002 (Page No.12846).

(k) On 10.10.2002 certain names were recommended for reward in connection with the investigation of C.R.No.135/2002. Although Mulani's name was not listed initially, it was specifically added by the applicant in his own handwriting.

(l) The applicant did not ensure the filing of a properly reasoned chargesheet in C.R. No.135/2002 P.S. Bund Garden and did not ensure the timely application of MCOCA to the whole case. Reference statement of the Director General of Police, Maharashtra Shri S.C.Malhotra. The filing of the chargesheet was hurried through by the applicant (Reference statement of Kishore Jadhav - Page 11947).

II. On this background, on and from 1.1.2003

the applicant was posted as Commissioner of Police, Mumbai.

(a) The applicant was well aware about various cases of stamps scam which were pending in Mumbai, while he was working as Jt.Commissioner, Mumbai during the year on 8.6.2002, he had sent a wireless message calling for the details of these cases.

(b) On 9.1.2003, DIG Jaiswal alongwith Addl.D.G.Karnataka Shri Shri Kumar personally met and informed the applicant about Telgi enjoying all comforts in his flat at Cuffe Parade, Mumbai. He ought to have immediately taken coercive action and ensured its implementation.

(c) Thereafter, a written report (Page 12181) dated 10.1.2003 was sent by DIG Jaiswal setting out in detail the facts noticed by him during their visit to Cuffe Parade flat. On this letter, the applicant had made a noting that API Kamat and the constables be placed under suspension with immediate effect. However, the record shows that they were not suspended till 15.1.2003 and no active steps were taken by the applicant to ensure the immediate suspension though it was within his

powers to ensure that the same was done with immediate effect. The noting dated 15.1.2003 on (Page Nos.12202 and 12203) clearly shows that till 15.1.2003 these police personnel were not suspended.

(d) It is significant to mention that DIG Jaiswal in his report had specifically voiced an apprehension that a big seizure may be concocted in order to protect the erring police officer, API Dilip Kamat and in fact, this apprehension came through because of the conspiracy that was hatched between the officials of Crime Branch, Mumbai (Statement of ACP Padwal at Page No.11087).

III. According to the prosecution, following circumstances could not be explained by the applicant.

(a) The fact that he had a closed door meeting with A.K.L.Telgi in isolation between himself and A.K.L.Telgi only to the exclusion of other high ranking officers (Statement of ACP Supriya Patil at Page No.11912, DCP (H.Q.) Koregaonkar at Page No.11898 and DCP Jay Jadhav at Page No.111940).

(b) The applicant knew A.K.L.Telgi even when

he was at Mumbai earlier is also apparent from the statement of DCP Vasant Koregaonkar (Page No.11898)

(c) Brain Maping (P-300) of AKL Telgi, shows that he had given positive responses to the question relating to payment made to the applicant, favour shown by the applicant in Pune cases and facilities provided in Mumbai custody by the applicant (Page No.12960 to 12963).

(d) The investigation is still going on.

14. While dealing with the allegations made against the applicant, Mr Manohar, learned senior counsel, submitted that the allegations levelled against the applicant are baseless. He submitted that some contravention of rules or office orders does not amount to an offence unless the contravention is willful, done deliberately and intentionally and not on account of negligence or inadvertence. In the present case, according to Mr. Manohar, even if it is assumed that there were certain minor breaches, the inferences drawn by the investigating agencies of dishonesty are unsustainable particularly when as a result of the breach it has not been clarified by the

investigating agency as to how the principal accused -Telgi, who was already languishing in jail, was able to perpetuate further crimes and depriving benefits therefrom. There must exist a "quid pro quo" for the alleged help or support by public servant which enabled the other accused to perpetuate further crime.

Mr Manohar invited my attention to several documents and contended that Mulani was appointed by Mr Mushrif as one of the members of the Team for field work. the minutes no.120/02 dated 7.8.02 of the meeting held by Mr Mushrif as a direct supervisory officer clearly indicates the duties allotted to the various officers in the investigation. It was Mr. Mushrif who was responsible for sending Mulani to Bangalore for seeking custody of Telgi. The applicant had no direct connection with the investigation of the said case.

Mr Manohar further submitted that the applicant was never made aware of Mulani’s adverse antecedents before 6.9.2002. On that date for the first time, the applicant was informed about Mulani being in telephonic contact with Telgi who was then

lodged in Central Jail at Bangalore. The said information was shared by Basak for the first time with the applicant on 6.9.2002. He further submitted that the order of transfer was stayed by MAT on 6.9.2002 and inspite the stay order from MAT he transferred Mulani on 30.9.2002 for which the applicant was required to face contempt action of MAT. While justifying the delay in taking action or steps to neutralise Mulani, it was contended that the gap between 6.9.2002 and 30.9.2002 was basically to examine and analyse the legal aspect of MAT's order and due to annual Ganpati festival from 10.9.2002 and 21.9.2002.

In short, it was contended that the applicant, being the Commissioner of Police for the Commissionerate area, was in overall incharge of the area and was not acting as a supervisory officer in this case or in any other case for that matter. He was not expected to monitor every investigation. In view of this, simply because there was some delay on the part of the applicant to neutralise Mulani or taking prompt action against him, it cannot be said that he was either a conspirator or he abetted the organised crime

attracting the prosecution against him under the provisions of MCOCA.

In so far as Cuffe Parade flat episode is concerned, Mr. Manohar submitted that the applicant came to know about it only on 9.1.2003 when Jaiswal orally informed him about his visit to the said flat. As a matter of fact, the applicant had promptly given instructions on telephone to place Kamat and three constables under suspension, who were having custody of Telgi at the relevant time. On 11.1.2003, the written suspension orders were issued and in view of this, according to Mr Manohar, it cannot be said that there was a delay in taking action as alleged in the chargesheet.

15. The learned counsel for the CBI, took me through the relevant documents in the chargesheet in support of his submission and justified the action of the prosecution in invoking the provisions of MCOCA against the applicant.

16. Though at this stage, a detailed examination of evidence and elaborate documentation on merits of the case need not be undertaken, only

with a view to indicate reasonable grounds why bail is being granted or refused, I went through the documents with the assistance of the learned senior counsel for the parties.

The applicant was the Commissioner of Police, Pune and, thereafter, of Mumbai during the period with which we are concerned in this application. He was at the helm of affairs at both the places. He was armed with all the powers which he could have used against the accused involved in the case, as also against the erring officers. However, the facts and circumstances of the case show that the applicant used all such powers at his command to protect and project Mulani and Kamat as good and responsible officers working in the department who in fact were helping and supporting, aiding and abetting and were in communication and association with the organised crime syndicate of Telgi.

. My attention was invited to several documents by the learned senior counsel appearing for the parties consisting of the statements of Basak, DGP S.S.Malhotra, ACP Padwal, Adhip Choudhari, Addl.Chief Secretary, Karnataka

Government, Jai Jadhav, applicant's own statement under section 161 Cr.P.C, the transfer order of Mulani, letter of Jaiswal dated 10.1.2003, notings made by the applicant from time to time on various documents, complaints against Mulani, the affidavit of the applicant filed in the MAT, letters written by officers making allegations against each others, a wireless message dated 1.7.2002, statements of Santosh Shetty, Brijmohan Singh etc. A perusal of all the aforestated documents clearly shows that the applicant was aware about the tainted background and adverse antecedents of Mulani. The applicant had visited Bangalore on 9.7.2002 and 23.7.2002 and on both the occasions Mulani was with him. In the second visit, Basak also accompanied the applicant. The record also shows that the meetings were being held in the applicant's cabin with the investigating team. After the provisions of MCOCA were invoked and Jai Jadhav was appointed as investigating officer, the name of Mulani was included in the investigation team by the applicant. All overtacts of the applicant show that at every stage till 6.9.2002 and even thereafter a calculated attempt was being made by

the applicant to continue Mulani in the investigation team and he was given responsible role to play in the investigation.

Mulani was transferred to Jat, district Sangli by the order of Government dated 4.9.2002. The order was received in Pune on 6.9.2002. It appears that Mulani had gone on leave and resumed after obtaining the order of stay from the MAT. It reveals from the record and which has not been denied by the applicant that he was informed by Basak about Mulani being on telephonically contact with Telgi, who was then lodged in Central Jail at Bangalore and his tainted role in the case. This information was shared by Adhip Choudhari with Basak, based on the material collected by the investigating team at Bangalore. The applicant had assured Basak that he would neutralise Mulani. However, he did not do so till 30.9.02. The only explanation that has been offered by the applicant for the delay that the applicant wanted to examine and analyse the legal aspects of MAT's orders and due to annual Ganpati festival which was due from 10.9.2002 and 21.9.2002. The order of stay granted by MAT was to the transfer of Mulani from Pune to

Jat and undoubtedly not against taking him out from the investigation team. After receiving such confidential and sensitive information by the applicant, who was holding most responsible post at the relevant time, he himself should have kept Mulani away from the investigation of fake stamps case either issuing directions or orders to that effect or at least kept Mushrif and other investigating officers informed requiring them to keep Mulani away from investigation of the case. Instead, he allowed Mulani to continue in the investigation team even after 6.9.02, this lapse on the part of the applicant under any circumstances cannot be termed as innocent, innocuous and inadvertent. This observation becomes stronger if we look at the subsequent events,i.e. overtacts of the applicant after 6.9.02. After 6.9.02 Mulani was continued in the investigation team. He was sent to Bangalore all alone on 18.9.02. When a proposal was placed before the applicant to recommend names of officers for rewards for their outstanding role in the fake stamps case consisting of nine names, the applicant on 10.10.02 included the name of Mulani in his own handwriting in the

said list of officers. This cannot be termed as innocent dereliction of duties. At every stage it, prima facie, shows that there was a calculated attempt on the part of the applicant to continue Mulani in the investigation team and see that he is projected as most efficient officer despite the knowledge of his adverse antecedents and the tainted role in the investigation of fake stamps case. It is not possible to accept the submissions of Mr Manohar to prima facie hold that the applicant has not committed any offence, much less the offence under the provisions of MCOCA and the acts and omissions would at the most amount to innocent dereliction of duties.

17. In so far as "Cuffe Parade flat" episode is concerned, it is true that the applicant took over as Commissioner of Police Mumbai on 1.1.2003. The custody of Telgi was with Mumbai police from 20.10.02 to 21.1.03. However, fact remains that on 9.1.2003, DIG Jaiswal along with Addl. D.G.Karnataka- Shri Srikumar had personally met the applicant and informed him about Telgi’s enjoying all comforts in his flat at Cuffe Parade, and

conducting his unlawful activities on mobile phone, requesting him to take immediate coercive action and ensure its implementation. The applicant, did give oral instructions on telephone to suspend Kamat and three constables who were with Telgi in Colaba flat. But did not ensure its implementation. On 10.1.2003, a written report was sent by DIG Jaiswal setting out in detail about their visit to Cuffe Parade flat. The applicant did make a noting on the said written report directing to suspend Kamat and the constables with immediate effect. However, the record shows that they were not suspended till 15.1.2003. The report of Jaiswal dated 10.1.03 had specifically voiced certain apprehensions which ultimately came through. On 15.2.2003, a huge stock of fake stamps and genuine stamps was recovered at Bhiwandi worth Rs.820 crores by the team led by Kamat. C.P. Padwal’s statement dated 12.1.2003 clearly supports the allegation of the prosecution that the conspiracy was hatched between the officials of Crime Branch, Mumbai to save Kamat on the instructions of the applicant. The recovery of huge stock of stamp papers at Bhiwandi, according

to the prosecution, was at the instance of Telgi and not at the instance of Shabir Shaikh as shown by Kamat in the panchnama.

18. In view of this factual position, I would now like to consider the submissions of Mr Manohar, learned senior counsel for the applicant, that even if the allegations in the chargesheet are accepted as it is, the provisions of MCOCA are not applicable against the applicant or any other accused in the case for that matter.

19 Before the enactment of MCOCA, there existed two such stringent enactments, i.e. Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and the Narcotic Drugs and Psychotropic Substances Act, 1985, (NDPS). The provisions of MCOCA are similar to those enactments, although not identical, in respect of stringency thereof. However, the Statement of Objects and Reasons of MCOCA and of TADA and NDPS is not similar. The background in which these acts were introduced will have to be borne in mind while considering the submissions made on behalf of the

applicant.

20. Heavy reliance was placed on the judgment of the Apex Court in **Hitendra Vishnu Thakur and ors Vs. State of Maharashtra and ors, 1994 (4) SCC 602**. The Apex Court had an occasion to deal with the provisions of TADA. The observations made by the Apex Court in the said judgment and in particular in paragraphs 13 and 14 of the report held thus :

> "13. We would, therefore, at this stage like to administer a word of caution to the Designated Courts regarding invoking the provisions of TADA merely because the investigating officer at some stage of the investigation chooses to add an offence under same (sic some) provisions of TADA against an accused person, more often than not while opposing grant of bail, anticipatory or otherwise. The designated Courts should always to consider carefully the material available on the record and apply their mind to see whether the provisions of TADA are even prima facie attracted."

> "14. ... ... Where the Designated Court without as much as even finding a prima facie case on the basis of the material on the record proceeds to chargesheet an accused under any of the provisions of TADA, merely on the statement of the investigating agency, it acts merely as a post office of the investigating agency and does more harm to meet the challenge arising out of the 'terrorist' activities rather than deterring terrorist activities. ... . "

It is thus clear that the Courts should always to consider carefully material available on record and apply their mind to see whether or not the provisions of TADA are even prima facie attracted. The Courts are not expected to proceed to chargesheet even without finding a prima facie case on the basis of material on record. It is not expected to act as a post office of the investigating agency. The same principle, according to Mr Manohar, learned senior counsel appearing for the applicant, mutantis mutandis is applicable to invoke the provisions of MCOCA and further to hold the applicability thereof in respect of the cases on whom the provisions of the

said Act is clamped.

21. Before going to the relevant provisions, it would be advantageous to note the Statement of Objects and Reasons for enacting MCOCA. The Statement of Objects and Reasons is a key to unlock the mind of legislature in relation to substantive provisions of statutes. It is now well settled that a statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read first as a whole and then section by section, clause by clause, phrase by phrase and word by word. It has to be looked at in the context of its enactment with the glasses of the statute maker. No part of the statute or no word of statute can be construed in isolation.

The Statement of Objects and Reasons provides that the organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money

laundering, etc. It further provides that the illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on our economy. It is seen that the organised crime syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities. It is also noted in the Statement of Objects and Reasons that the existing legal frame work, i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime. It is with these objects, MCOCA came to be enacted and brought into force on 24.4.1999.

22. The relevant provisions in MCOCA are to

be found in section 2(1) (a) (d),(e),(f) and sections 3(2)(5) and 24 of MCOCA. However, at this stage, we are concerned with sections 2(1) (d),(e),(f) only. These provisions will have to be read and rolled together to find out what is "organised crime syndicate", "organised crime" and "continuing unlawful activity". . Sections 2(1), (d), (e) and (f) of MCOCA read thus:

> "2. (1) In this act, unless the context otherwise requires:-
>
> (d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a members of an organised crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;
>
> (e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised

crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;

(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;

It is clear that all the definitions are intertwined in a cyclic order. Section 2(1)(f) defines "organised crime syndicate" which means the accused belonged to a group of two or more persons acting singly or collectively as a syndicate or gang indulge in activities of "organised crime" as defined in 2(1)(e). Section 2(1)(e) defines "organised crime". I would deal with this provision at little later stage. Section 2(1)(d) defines continuing unlawful activity. An activity which is prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, and that

the said activity is undertaken by the accused either singly or jointly as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets have been filed before the competent Court within the preceding period of ten years and the Court has taken cognizance of such offence. Wordings of these provisions are clear and unambiguous and needless to state that the statute, being an edict of legislature, must be given its plain meaning.

23. Mr. Manohar, learned senior counsel for the applicant, pressed into service a cardinal rule of interpretation "ejusdem generis"/ "nocitur-a-socilus" and contended that the offences with which the applicant is charged, do not amount an organised crime as defined in MCOCA. His main thrust was on the definition of "organised crime" as defined in section 2(1)(e) and more particularly the general words "other unlawful means". In his submission, unless and until the means akin to violence, threat of violence or intimidation or coercion are used by the accused, the offence

cannot fall within the ambit of section 3(1) of MCOCA. In other words, according to Mr Manohar, the commission of every offence for gaining pecuniary benefits by "unlawful means" in absence of violence, intimidation or coercion on the principles of ejusdem generis, the provisions of MCOCA cannot be invoked. In short, the submission of Mr Manohar is that even if all the allegations against the applicant or any other accused in this case for that matter are taken at its face value, the provisions of MCOCA would not be attracted inasmuch as no violence, threat of violence or intimidation or coercion was allegedly used by the applicant or other accused while committing the alleged offence. He placed reliance on the judgment of King's Bench in **Tilmanns and Co Vs.S.S.Knutsford Ltd, (1908) 2 K.B. 385**. In the said judgment, by making reference to Maxwell on the interpretation of Statutes, it was observed that the general word which follow particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words; or, in other words, as comprehending only things of the

same kind as those designated by them; unless, of course, there be something to shew that a wider sense was intended. It was further observed that one has to assume that the general words are limited by the immediately preceding particular words, unless there is something on the face of the instrument which ought to lead one to refuse to apply ejusdem generis rule. The principle laid down in this judgment was reiterated in **Attorney General Vs.Brown, (1920) 1 K.B. 773.** Reliance was also placed on the judgment of **Queen Empress Vs.Imam Ali, ILR 10 All 150 (FB)**. Further, Mr Manohar placed reliance on the judgment of the Apex Court in **A.L.Ranjane Vs. Ravindra Sethan, (2003) 1 SCC 379**. The Apex Court in that case was interpreting section 313 of the Bombay Municipal Corporation Act and more particularly the general words "other things" as occur in clause (a) of sub-section (1) of section 313. While so doing, the Apex Court in paragraphs 7 & 8 of the report observed thus :

> "7. Coming to the legal aspect regarding interpretation of Article 313 of the Bombay Municipal Corporation act, we would like to

first quote the relevant portion:

"313.(1) No person shall, except with the written permission of the Commissioner:-

(a) place or deposit upon any street or upon any open channel, drain or well in any streets (or in any public place) any stall, chair, bench, box ladder, bale or other thing so as to form an obstruction thereto or encroachment thereon,

(b) xxx xxx

(c) xxxx xx

8. A bare perusal of the provision contained in clause (a) of sub-section (1) of Section 313 of the Act shows that the Commissioner can grant permission for placing or depositing on any street etc. any stall, chair, bench, box, ladder, bale. This provision nowhere authorises the Commissioner to grant permission with respect to a stall/structure of the type described hereinbefore set up by the appellant. The structure for which permission can be granted by the Commissioner has to be similar to items mentioned in the clause. Permission has to be for something which can be read as

ejusdem generis with the items mentioned in clause (a). The items mentioned in clause (a) indicate that they are of a temporary nature and are easily removable as and when required. The structure in the present case is of a size which have if not permanently embedded on road cannot be said to be akin to items mentioned in clause (a). In the present case the structure is embedded on the road. Its four poles are embedded in the concrete paving on the road. Moreover, the structure has water and electricity connections and permanent water tank meant to store water and ensure permanent supply of water to the stall, is installed on the side of the structure. It has shutters which enable locking of the stall whenever required. No permission can be granted by the Commissioner for setting up such a structure under Section 313 of the Act. Section 313 totally bars any stall or structure of the type put up by the appellant. So permission, if any, granted by the Commissioner is violative of the statute and is, therefore, illegal."

24. On the other hand, Mr Chari, learned senior counsel for the respondent submitted that the rule of ejusdem generis does not apply to the present case. The words "other unlawful means" found in section 2(1)(e) must be given its full interpretation to cover each and every kind of unlawful activities keeping in view the statement of objects and reasons of MCOCA. The scope of MCOCA cannot be restricted or limited by applying rule of ejusdem generis while interpreting the words "other unlawful means" found in section 2(1)(e). He placed reliance on the judgment of the Apex Court in **Tribhuban Prakash Nayyar Vs The Union of India, AIR 1970 Supreme Court 540 and in The U.P.State Electricity Board and anr Vs. Hari Shanker Jain and ors, AIR 1979 Supreme Court 65**.

25. If the submissions of Mr Manohar on the interpretation of the general words "other unlawful means" in section 2(1)(e) are accepted, it will have to be held that the provisions of MCOCA do not apply to the facts of the present case. In that case the applicant will have to be enlarged on bail.

26. Section 2(1)(e) defines the "organised crime" which means any continuing unlawful activity, as defined in clause (d) by an individual, singly or jointly, either as a member of an organised crime syndicate as defined under clause (f) or on behalf of such syndicate, and such syndicate carry out their activities prohibited by law for the time being in force, subject to other requirements stipulated in the definition of "continuing unlawful activity", by use of "violence" or "threat of violence" or "intimidation" or "coercion" or "other unlawful means", with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. The objective of the organised crime syndicate needs to be for gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person.

This Court, while dealing with the challenge to the constitutional validity of MCOCA in **Bharat Shah's case** in paragraph 20 has observed that "a statute must always be interpreted with

reference to the objects for which it is enacted, with reference to the preamble of the enactment. In the present case also, therefore, we must remember that this enactment of MCOCA is enacted by the Legislature for the purposes of making special provisions for the prevention and control of criminal activity by a person or a gang and for matters connected therewith or incidental thereto meaning thereby connected and incidental to organized crime and organised crime syndicate." It is thus clear that the general words "other unlawful means" will have to be interpreted with reference to the objects of MCOCA for which it was enacted.

27. The Apex Court in **Amar Chandra Chakraborty V. The Collector of Excise, Govt of Tripura, Agartala and ors, AIR 1972 Supreme Court 1863**, has clearly stated as to when the doctrine of ejusdem generis applies. In paragraph 9 of the report, the Apex Court while considering the expression "any cause other than" as occurring in section 43(1) of Bengal Excise Act, held that as to when the doctrine "ejusdem generis" applies. The

relevant observations read thus :

> "The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category, (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent."

Similarly, the Apex Court in **Asstt.Collector of Central Excise, Guntur V. Ramdev Tobacco Company, AIR 1991 Supreme Court 506** while dealing with ejusdem generis rule has clearly held that "rule of interpretation is to allow the general words to take their natural wide meaning unless the language of the statute gives a different indication or such meaning is likely to lead to absurd results in which case their meaning can be restricted by the application of this rule". In yet another judgment of the Apex Court in **Tribhuban Prakash Nayyar Vs The Union of India** (supra) while considering the scope of the expression "other sufficient cause"

occurring in clause (4) rule 18 of the Displaced Persons (Verification of Claims) Supplementary Rules, 1954, observed that "the rule of interpretation generally known as ejusdem generis rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all, words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous". It was further held that "ejusdem generis rule being one of the rules of interpretation, only serves, like all such rules, as an aid to discover the legislative intent; it is neither final nor conclusive and is attracted only when the specific words enumerated, constitute a class which is not exhausted". In **The U.P. State Electricity Board and Anr. Vs. Hari Shankar Jain and ors** (supra), the Apex Court has observed that the true scope of the rule of "ejusdem generis" is that "the words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the

rule is one which has to be "applied with caution and not pushed too far". It is a rule which must be confined to narrow bounds so as not to unduly or unnecessarily limit general and comprehensive words."

28. It is thus clear that the general words must ordinarily bear their natural and larger meaning and need not be confined to ejusdem generis to things previously enumerated unless the language of the statute spells out an intention to that effect. The scope of the general words could be limited in cases where a larger meaning is likely to lead to absurd and unforeseen results. The rule only serves like all such rules as an aid to discover the Legislative intent. It is neither binding nor conclusive and is attracted only when specific words enumerated, constitute a class which is not exhausted.

29. The specific enumeration in section 2(1)(e) are "use of violence, threat of violence, intimidation, coercion" and the general words "other unlawful means". There is no difficulty in

understanding what is meant by "violence", "use of violence" or "threat of violence". But on the basis of this enumeration, it is clear that they are contiguous to the class to which they all belong. All these enumerations are in relation to bringing about pecuniary benefits or undue advantages by actual or threatened pressures being applied to individuals. The use of violence and threat of violence are simple and can easily be understood. But what is coercion. It is defined in section 15 of Indian Contract Act, which provides "that coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatsoever with the intention of causing any person to enter into an agreement." Thus, the definition of coercion given in Indian Contract Act, in my opinion, covers every offence under the IPC and in addition unlawful detention or threat of detention of any property of any person whatever with the intention of causing any person to enter into an agreement. These words are quite wide.

. Similarly, section 503 IPC defines intimidation which provides that "whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation." This definition covers threat of any kind of injury whether to person's reputation or property and whether the person who or whose reputation is threatened is not the person himself but in whom he is interested with intention of causing the person threatened to do a particular act he would not ordinarily do or omit to do something which he would not ordinarily omit.

30. Having regard to the definitions of words "coercion" in the Contract Act and "intimidation" in IPC, when we take close look at the language of section 2(1)(e), one finds that the general words viz. "other unlawful means" were

intended to receive their wide meaning and were not to be construed in a limited sense with the aid of ejusdem generis rule, more particularly when we read those words in the light of the Statement of Objects and Reasons of MCOCA. The Statement of Objects and Reasons speaks about smuggling in contraband, illegal trade in narcotics, collection of protective money and money laundering etc. For committing these offences one need not indulge into violence or threat of violence and for that matter even "intimidation" and "coercion" if the dictionary meaning of these words is taken into account. Moreover, the Legislature also intended to curb illegal wealth and black money generated by the organised crime which is very huge and has serious adverse effect on our economy. It is thus clear that the expression "other unlawful means" as occur in section 2(1)(e) of MCOCA, which defines "organised crime" must be given their natural wide meaning to cover each and every kind of unlawful activity referred to in the Statement of Objects and are not to be construed in a limited sense with the aid of "ejusdem generis" rule so as to defeat the object of the Act.

31. I would now like to consider the submissions of Mr.Manohar, learned senior counsel for the applicant that even accepting the allegations made in the matter against the applicant as it is, he cannot be said to have committed an offence of conspiracy under section 120(B) of IPC and the offence of abetment under section 3(2) read with section 2(1)(a) of MCOCA. He further submitted that for an offence of "conspiracy" there has to be an agreement by the parties to commit an illegal act, the agreement has to be a meeting of minds of the accused as if they breath together and this aspect must be supported by material on record that the accused had both knowledge and intention of criminal act to be committed.

The Supreme Court, while dealing with the provisions of Section 120(A) and 120(B) IPC, in paragraph 272 of the judgment in **Kehar Singh Vs. State (Delhi Admn.)-AIR 1988 SC 1883** has held that "generally a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on

evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon the circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence, direct or circumstantial. But Court must enquire whether the two persons are independently pursuing the same end or they have come together to pursuit of the unlawful object. The former does not render them conspirators, but the latter does".

Relying on these observations, Mr Manohar submitted that innocuous, innocent or inadvertent acts and omissions of the applicant cannot be the basis to hold him a conspirator in the present case unless there is a material to support the charge of conspiracy. In so far as the propositions of law canvassed by Mr Manohar are concerned, there is no difficulty in accepting the same. The question is whether or not it is possible to hold that the acts and omission of the applicant were innocuous, innocent and inadvertent. To me they do not appear so. I have already recorded my answer to this question in negative.

32. The Apex Court in **State of Karnataka Vs. L.Muniswamy-AIR 1977 SC 1489** has observed that "... a few bits here and few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the respondents with the crime,howsoever skillfully one may attempt to weave those bits into a presentable whole." Here that is not the case. In so far as the present case is concerned, one requires to bear in mind that the applicant is charged for the offence under the provisions of MCOCA and in particular section 21(4)(b). It is true that the ingredients of an offence under section 120-B are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act and for doing by any illegal means an act which by itself may not be illegal, as held by the Apex Court in **P.K.Narayanan Vs. State of Kerala, (1995) 1 SCC 142**. However, while examining the case pending trial, the Court is liable to bear in mind that the proper stage to prove the charge of conspiracy would be during trial.

Mr.Manohar, learned senior counsel for

the applicant, placing reliance upon the aforestated judgment of the Apex Court, submitted that there is absolutely no evidence to show that the applicant, at any point of time, was a party to any agreement, much less to any conspiracy for the commission of an organised crime or any other offence which is the subject matte of this prosecution. He further submitted that there is a total absence of association much less acquaintance of the applicant prior to 7.6.2002 with Telgi and for that matter Mulani. The applicant never associated in the earlier cases of fake stamps registered at Mumbai. Moreover, the arrest of suspects, seizure of huge quantity of stamps, fake as well as genuine at Bhiwandi, warning given by the applicant to Telgi in the presence of the investigating officer to cooperate which is given to Jai Jadhav to have his team, would all show that the charge under section 120-B against the applicant is wholly unwarranted.

33. On the other hand, Mr Chari, learned senior counsel for CBI, submitted that reading of section 2 of MCOCA, what characterises the action

of any person as punishable under the said Act is that the unlawful action is committed singly or collectively as a member of an organised crime syndicate or on its behalf, such syndicate has been defined as a group of two or more persons, who acting either singly or collectively as a syndicate or gang indulge in activity of organised crime. He further submitted that the moment one conceives of the existence of a group of two or more persons who jointly indulge in unlawful activity, one must inevitably characterise it as a conspiracy as defined in the Indian Penal Code.

Mr.Chari, further submitted that at the stage of considering the application for bail in every case under MCOCA where there exists organised crime syndicate, in my opinion, while examining the case at the stage of bail, the Courts should presume that there exists conspiracy and that every person, who is part of continuing unlawful activity, is a conspirator. In other words, whenever we talk of the organised crime syndicate we must also bear in mind that there exists a conspiracy and that all people who are concerned with the organised crime syndicate are the members

of "the conspiracy" or if they are working on its behalf" consciously and with knowledge that there exists such conspiracy.

34. I would not like to express any opinion on the aforesaid submission of Mr Chari, since in my view, even if an accused, who is charged for the offence under section 3(2), is not a conspirator as urged, still he could be held guilty under that provision provided acts and commissions of such person are sufficient enough to prima facie hold that they are committed to facilitate the commission of an organised crime. In other words, if any individual and more particularly a public servant aware of the existence of a conspiracy and of its aims and objectives goes out of his way, does something untoward and not part of his legal obligations in order to assist the functioning of a conspiracy, one may have to presume, at the stage of considering the bail application, that he is a part of such activity so as to attract the provisions of section 3(2) read with section 2(1) of MCOCA. Taking the allegations against the applicant, it would not be possible to accept that

there is no evidence to show that the applicant at any point of time has either assisted or helped or supported or has knowingly facilitated the commission of an organised crime. The provisions of sub-section (2) of section 3 of MCOCA clearly show that an accused, who "knowingly facilitates the commission of an organised crime" is also liable for punishment under this provision. Keeping in view the allegations as reflected in the chargesheet against the applicant, I have no hesitation in holding that there is enough material on record to my satisfaction to hold that there exist reasonable grounds to believe that the applicant had knowingly facilitated the commission of the organised crime through Mulani at Pune and Kamat at Mumbai. Therefore, looking at the offence under section 3(2) from any angle prima facie there is sufficient material on record to believe that he is guilty of such offence.

35. The organised crime syndicate of Telgi, besides the provisions of MCOCA, is charged for offences under sections 120-B, 255, 259,260,263-A(1)(a)(b),471, 472,474 read with 34 of

IPC. All these provisions deal with counterfeiting government stamps. Section 259 provides punishment for having possession of counterfeit government stamp. Section 260 provides for using as genuine a Government stamp known to be a counterfeit stamp. Section 263A(1)(a)(b) prohibits use of fictitious stamps and provides punishment for whoever makes, knowingly utters, deals in or sells any fictitious stamps,or knowingly uses for any postal purpose any fictitious stamp or has in his possession, without lawful excuse, any fictitious stamp. Section 471 provides punishment for using as genuine a forged document or electronic record, section 472 provides punishment for making or possessing counterfeit seal etc with intent to commit forgery punishable under section 467 and section 474 provides punishment for having possession of document described in sections 466 or 467, knowing it to be forged and intending to use it as genuine.

Mr. Manohar submitted that for the purposes of abetment, unless the accused is stated to have abetted the principal accused, viz. Telgi, who has committed offences under the aforestated provisions of IPC, the applicant cannot be said to

have committed an offence under sub section (2) of section 3 read with section 2(1)(a) of MCOCA. Mr Manohar,therefore, submitted that the offences were complete and therefore there could not be any abetment by the applicant to the crime which was complete and more particularly complete prior to June, 2002. According to Mr Manohar, an abetment necessarily postulates help, supports and assistance prior to commission of crime. All the aforestated offences under the IPC were committed prior to June, 2002 and, therefore, the applicant could not have been arrested for the offence of abetment. The arrest of the applicant, after June, 2002, was totally illegal and as a necessary corollary his detention and custody in the said crime, according to Mr Manohar, is illegal and without any authority of law. In support of his submission, the reliance was placed on the judgment of **Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569** and the judgment of this Court in **Bharat Shantilal Shah Vs. State of Maharashtra, (2003) 2 All MR (Cri) 1061**. In my opinion, the ratio of the judgment in Kartar Singh would not apply to the facts of the present case. Keeping in view the

allegations against the applicant it would not be possible to hold that the commission of acts and omissions of the applicant were not accompanied by a guilty mind or they were committed without actual knowledge as to what would be the consequence of his acts and omissions.

In **Bharat Shah Vs. State of Mah.**(supra), this Court read the definition of "abet" occurring in section 2(1)(a)of the Act in addition to the definition of these words occurring in sections 107 and 108 of IPC holding that the definition is only inclusive. It was further observed that "it says the abet means what it means in the Indian Penal Code and it includes what it is as by clauses 1,2 and 3 mentioned in 2(1)(a). The principle of cohesive interpretation of statute requires such interpretation and if so made there is no constitutional infirmity in the provisions of section 2(1)(a). This court in paragraph 18 of the report observed thus :

> "18. .. ... It is viewed that an inclusive definition is resorted to when something already well defined exists and Legislature desires to add something more to it. The

> definition to abet or abetment or abettor is existing for the last more than 100 years in the Indian Penal Code Section 107 and 108. We are of the opinion that the definition mentioned in Section 2(1)(a) is neither unconstitutional nor vague and there is therefore no reason to strike it down. All that has to be done by this definition clause is to include certain specified items in the definition in IPC. The entries added to it by three clauses in 2(1)(a) of the Act have to be read therefore in consonance with the provisions of sections 107 and 108 in the Indian Penal Code which as aforesaid always contemplate intention to aid or assist or instigate commission of criminal offence. Thus, it is necessary to incorporate the provisions of Section 107 in section 2(1)(a) ... ... ".

It is thus clear that three clauses in section 2(1)(a) of MCOCA have to be read in consonance with the provisions of sections 107 and 108 of IPC which, as held, always contemplates intention to aid or assistant or instigate commission of

criminal offence.

36. Keeping in view the overall facts and circumstances of the case, it would not be possible for me to accept that the criminal acts of the accused in the instant case pertain to a period before coming into force of MCOCA. The acts charged here relate not only to the printing of counterfeit stamps and stamp papers, they relate to dealing in and selling such counterfeit stamps and stamp papers; they relate to the setting up of an elaborate marketing machinery for that purpose; they relate to what can properly be described as a setting up of a business organised for the purpose and they relate perhaps to the most important activity of such syndicate the "laundering" of the proceeds so that they appear to have been gains of legitimate business activity. Similarly, it would not be possible to accept that after the arrest of 65 accused, the criminal activity has come to a halt. The activity of the organised crime continued and is continuing and as a matter of fact some instances have taken place or continued even after the arrest of Telgi or while he was in police

custody. It is very important to bear in mind that the investigation is by no means over. The fact that the investigation is not over is bast established by the order of the Apex Court dated 15.3.04 by which the Apex Court has directed that the investigation in fake stamp case be taken over by the CBI. It is from this point of view, it is clear that we are dealing with an on-going investigation into the on-going activity of an organised crime syndicate that still exists in respect of which it is not unreasonable to accept that new fields will come to light and perhaps some other accused as well.

37. Heavy reliance was placed on the judgment of the Apex Court in **Kartar Singh Vs. State of Punjab, 1994 (3) SCC 569**. The Apex Court was dealing with the provisions of TADA including the provisions of section 2(1)(a) of TADA defining the word "abet". The definition of the word "abet" in TADA and the definition of the word "abet" under section 2(1)(a) of MCOCA are identical. The relevant section reads thus :

"2(1) In this act, unless the context otherwise

requires,;

(a) "abet", with its grammatical variations and cognate expressions, includes, -

(i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate;

(ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and

(iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;"

The Apex Court, while dealing with these provisions as they occur in section 2(1)(a) of TADA,in paragraphs 128, 129, 131, 132, 133 and 134 held thus :

128. Therefore, when the substantive provisions of the Act expressly require the intention as an essential ingredient to

constitute an offence, can it be said that the ingredient of intention should be excluded on the part of the abettor who abets those substantive offences. In other words, can it be said that the abettor has abetted the substantive offence without any guilty mind (mens rea) or without actual knowledge as to what would be the consequence of his designed act.

129. Now turning to the definition in question, clauses (ii) and (iii) need not require any exposition since both the clauses themselves are self explanatory. As rightly pointed out, the definition of the word "abet" as given in section 2(1)(i) is with wide flexibility rather than with meticulous specificity. Therefore, we have to explore its allowable meaning so that there may not be any uncertainty inevitably leading any person to much difficulty understanding acts prohibited by law so that he may accordingly.

131. Let us examine clause (i) of section 2(1)(a). This section as shown be blissfully and impermissibly vague and

imprecise. As rightly pointed by the learned counsel, even an innocent person who ingenuously and undefiledly communicates or associates without any knowledge or having no reason to believe or suspect that the person or class of persons with whom he has communicated or associated is engaged in assisting in any manner terrorists or misapplying this definition. In ultimate consummation of the proceedings, perhaps that guiltless and innocuous innocent person may also be convicted.

132. The counter submission made by learned Additional Solicitor General justifying the exclusion of "mens rea" or intention or knowledge on the part of the person who communicates or associates with any person who is engaged in assisting in any manner terrorists or disruptionists cannot be countenanced in view of the fact that the substantive offences require by express provisions the intention on the part of the abettor. The decisions relied upon by him cannot be any assistance to support his plea

for exclusion of intention in view of the various factors inclusive of the requirement of the intention for the substantive offences.

133. Therefore, in order to remove the anomaly in the vague and imprecise definition of the word "abet", we for the above mentioned reasons are of the view that the person who is indicted of communicating or associating with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists should be shown to have actual knowledge or to have reason to believe that the person or class of persons with whom he is charged to have communicated or associated is engaged in assisting in any manner the terrorists and disruptionists.

134. To encapsulate, for the discussion above, the expressions "communication" and "association" deployed in the definition should be qualified so as to save the definition, in the sense that "actual knowledge or reason to believe" on the part of a person to be roped in with the aid of that definition should be read into it instead of reading it down and clause

(i) of the definition 2(1)(a) should be read as meaning "the communication or association with any person or class of persons with the actual knowledge or having reason to believe that such person or class of persons is engaged in assisting in any manner terrorists or disruptionists" so that the object and purpose of that clause may not otherwise be defeated and frustrated.

38. It is thus clear that a person who is indicted of communication or associating with any person or class of persons who is engaged in assisting in any manner the organised crime syndicate should be shown to have actual knowledge or to have reason to believe that the person or class of persons with whom he is charged to have communicated or associated is engaged in assisting in any manner the organised crime syndicate. The expressions "communication" and "association" deployed in the definition should be qualified so as to save the definition, in the sense that "actual knowledge or reason to believe" on the part of a person to be roped in with the aid of that

definition should be read into it instead of reading it down. Clause (i) of the definition 2(1)(a) should be read as meaning "the communication or association with any person or class of persons with the actual knowledge or having reason to believe that such person or class of persons is engaged in assisting in any manner the organised crime syndicate" so that the object and purpose of that clause may not otherwise be defeated and frustrated. In so far as the facts of the present case and the allegations against the applicant are concerned, keeping those in view it would not be possible to hold that the applicant was not associated or was not assisting Mulani at Pune and Kamat at Mumbai or he did not have knowledge or reason to believe that they are engaged in assisting the organised crime syndicate of Telgi. The sequence of the events, in my considered opinion, is sufficient to show that the applicant had actual knowledge of the activities and adverse antecedents of Mulani and Kamat.

39. Mr Manohar, learned senior counsel for the applicant, submitted that the applicant was a

Commissioner of Police of the cities like pune and Mumbai.He was in overall charge of the area of the commissionerate. He was not a supervisory officer for each and every offence committed within his jurisdictional area.He was not supposed to meddle, interfere or monitor every investigation, neither he was supposed to screen a chargesheet, which was filed in Court by an Investigating Officer. He may be a privy to have discussion or advice if the officers of the investigating team approach him. Neither the provisions of the Bombay Police Act, 1951 nor the Police Regulations cast any obligation or duty of this type on him. Since the investigation was being carried out under the direct supervision of Addl.Commissioner of Police Mr Mushrif and Jt. Commissioner of Police Mr Maheshgauri, the applicant, according to Mr Manohar, it cannot be said that the applicant had knowledge of Mulani's antecedents. He was not responsible for continuing Mulani in the team of investigation. The applicant was not directly supervising the said offence.

. Keeping in view the nature of allegations which, prima facie, find support from

the material on record, the submissions of Mr Manohar, must be rejected. The facts of the case would go to show that his association with Mulani were with actual knowledge or atleast there are reasonable grounds to believe that the applicant was aware that Mulani was engaged in assisting the organised crime syndicate of Telgi.

Association with any person with actual knowledge or having reasons to believe that such person is engaged in assisting in any manner an organised crime syndicate is sufficient to hold that such person has aided and abetted the acts of the organised crime syndicate. The material available shows that the applicant had every reason to believe that Mulani was engaged in assisting the Telgi syndicate which, prima facie, in my opinion, amounts to abetment within the meaning of section 2(1)(a) of MCOCA.

40. Section 24 of MCOCA deals with punishment for public servants failing in the discharge of their duties. Section 24 reads thus:

> "24. Whoever being a public servant renders any help or support in any manner in the

> commission of organised crime, as defined in clause (3) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and also with fine."

It clearly provides that a public servant who renders any help or support "in any manner" in the commission of organised crime whether "before or after" the commission of any offence by a member of an organised crime syndicate. It further provides if such person abstains from taking any lawful measures under MCOCA or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, are liable for punishment with imprisonment which may extend to three years. It is thus clear that the section is divided into four parts. The submission was that section 24 is not attracted at all as the

applicant has not committed any of the acts which could comprehend in any of the four parts of section 24 of MCOCA. It is at the most, according to Mr Manohar, learned senior counsel for the applicant, a case of innocent dereliction of duties. The element of mens rea, an essential ingredient, is totally absent. Even, according to Mr. Manohar, assuming that there is any offence under section 24, its an independent distant offence unconnected with Crime No.135/2002. It was further submitted that in order to attract section 24, abstaining from taking any lawful measures under any other statute is not an offence. Such abstinence has to be from taking lawful measures under MCOCA. Thus, in order to attract this clause, according to Mr Manohar, there are two prerequisites on a proper interpretation of section 24 of MCOCA. Firstly, that a person against whom the charge is levelled must be the investigating officer of a crime because it is only at that point of time it can be attributed that he has abstained from taking lawful measures under the Act and secondly, the investigating agency must demonstrate specifically the measures which have been abstained

to be. In the present case the various allegations made even if accepted at face value, do not meet the requirements of section 24 of MCOCA. He also made reference to sections 32,33 and 43 of IPC which defines acts including illegal acts and omissions and illegal acts putting a corresponding duty on a person being legally bound to do something. He further submitted that the prosecution must initially point out the statutory provisions which cast a legal statutory duty on the applicant and then alone the question of the illegal omission can arise. Reference was also made to sections 175,176,187,221 and 222 of IPC to illustrate and highlight his submissions.

. Section 24 provides that a public servant, who renders any help or support "in any manner" in the commission of an organised crime as defined in clause (e) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate, would also be liable for punishment under the said provision. In my opinion, the acts and commissions on the parts of the applicant in helping and supporting Mulani and Kamat would, prima facie, fall within the first

part of section 24 and therefore it would not be correct to state that section 24 is not attracted. The role of the applicant clearly demonstrates that he rendered help and support to the member of an organised crime syndicate.

The argument of Mr Manohar that the maximum punishment under section 24 is three years and if he is not released on bail, the applicant may have to spend more than three years in prison. It would not be possible to accept the submission of Mr Manohar inasmuch as the provisions of sub-section 4 of section 21 does not make an exception in the case of charge under section 24 of MCOCA. That means it must be held that section 21(4) applies to cases of prosecution under section 24 as well as any other. The applicant's unblemished service record and gaining of prestigious awards would not help him to get out of bail, since I am prima facie satisfied that there are no reasonable grounds for believing that he is not guilty of the offences.

41. Having given my careful consideration to the submissions made by the learned senior counsel for the parties, in my opinion, no case for bail is

made out. The application for bail is rejected. I may, however, clarify that the observations on the facts recorded in this judgment should not be construed as any expression of opinion on merits of the case. The Special Court shall deal with the case uninfluenced by such observations made in the judgment and dispose of the trial expeditiously in accordance with law.

An authenticated copy of this order may be made available to the parties.

(D.B.Bhosale,J.)

CRA572-04

GPN-J-332-ARHCB-8-94-13,10,500-ALA4.
H.C.,A.S.,C.D.79e.

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE,
CRI.APPLICATION NO.572 OF 2004
R.B.Sharma Vs. The State & Anr.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders.

Mr.V.R.Manohar, Senior Advocate, with Mrs Usha Dahanukar, Mr Shrikant Shivade, Ms Akhila Kaushik, Shyam Dewani i/b Khaitan & Jaykar for the applicant.

Mr. Lalit Chari, Senior Advocate with Mr R.B.Thakare and Mr A.M.Chimalkar, for the respondents.

Mr V.B.Konde-Deshmukh, APP for respondent -State.

Coram: D.B.BHOSALE, J.

Date: 16th July, 2004.

PC:

For the reasons recorded in the the accompanying Judgment, the Court rejects the application for bail. The Court clarifies that the observations on the facts recorded in this judgment should not be construed as any expression of opinion on merits of the case. The Special Court shall deal with the case uninfluenced by such observations made in the judgment and dispose of the trial expeditiously in accordance with law.

Dt:30.7.04 For Addl.Registrar,